

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

\* \* \* \* \*

ROBERT T. BROCKMAN	*	NO. 4:22-CV-202
	*	Houston, Texas
VS.	*	
	*	9:50 a.m. - 11:04 a.m.
UNITED STATES OF AMERICA	*	August 3, 2022

\* \* \* \* \*

**MOTION HEARING**

**(Oral Argument of Counsel)**

BEFORE THE HONORABLE GEORGE C. HANKS, JR.  
UNITED STATES DISTRICT JUDGE

\* \* \* \* \*

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**GLR TRANSCRIBERS**  
9251 Lynne Circle  
Orange, Texas 77630 \* 409-330-1610

1 **APPEARANCES:**

2 For the Plaintiff:

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4 **Jones Day**  
5 717 Texas, Suite 3300  
6 Houston, Texas 77002

7 MS. KATHRYN KENEALLY  
8 MR. FRANK JACKSON  
9 **Jones Day**  
10 250 Vesey Street  
11 New York, NY 10281

12 For the Defendant:

13 MR. HERBERT W. LINDER  
14 MR. JONATHAN L. BLACKER  
15 MR. JOHN P. NASTA, JR.  
16 **U.S. Department of Justice**  
17 **Tax Division**  
18 717 N. Harwood, Suite 400  
19 Dallas, TX 75201

20 Court Clerk:

21 BYRON THOMAS

22 Electronic Recorder:

23 ANTONIO B. BANDA  
24  
25

1 | P R O C E E D I N G S

2 9:50 A.M. - AUGUST 3, 2022

3 THE COURT: Good morning, everyone. The first  
4 case on the Court's docket this morning is Cause No.  
5 4:22-CV-202, Mr. Robert Brockman vs. The United States  
6 of America.

7 Can counsel for each side just introduce  
8 themselves to the Court and then state the parties they  
9 represent, starting with the Government.

10 MR. LINDER: Good morning, Your Honor. Herb  
11 Linder on behalf of the United States.

12 THE COURT: Okay, good morning.

13 MS. KENEALLY: Good morning, Your Honor.  
14 Kathryn Keneally on behalf of Robert Brockman.

15 THE COURT: Okay.

16 MS. KENEALLY: And I'm joined today by Jason  
17 Varnado.

18 THE COURT: Mr. Varnado.

19 MR. VARNADO: Good morning, Your Honor.

20 MS. KENEALLY: And Frank Jackson.

21 MR. JACKSON: Good morning.

22 THE COURT: Welcome, Mr. Jackson.

23                               We're here this morning, everyone, for the  
24 Motion for Determination on the Complaint for Judicial  
25 Review and abatement of the Jeopardy Assessment and the

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1 Jeopardy Levy, pursuant to 26 U.S.C. 7429.

2 I've received all the information that  
3 you've filed with the Court. The last thing I received  
4 was Document 55, which was filed on the 27th. Was there  
5 anything filed after that? I took some time this  
6 morning to go through the file to see if there was any  
7 additional documents. That was the last document that  
8 was filed, which was Plaintiff's Reply in Support of  
9 the Second Supplemental Memorandum.

10 MS. KENEALLY: No, Your Honor.

11 MR. LINDER: No, Your Honor.

12 THE COURT: Great. Then I'm up to speed.  
13 I've read all the exhibits, read the briefing, gone  
14 through all the exhibits.

15 Before we begin, is either side expecting  
16 an evidentiary hearing? You've submitted a lot of  
17 affidavits, but is anybody going to be called live for  
18 this morning's oral argument?

19 MS. KENEALLY: Not from Mr. Brockman, Your  
20 Honor.

21 MR. LINDER: Not on behalf of the United  
22 States.

23 THE COURT: Great, okay.

24 Well, as you can imagine, I've got a lot  
25 of questions, but I'd like to let the parties argue the

1 motion. How long does side believe that they need to  
2 argue?

3 MS. KENEALLY: About 20 to 30 minutes, Your  
4 Honor.

5 THE COURT: Okay. 30 minutes will be great.

6 MS. KENEALLY: Thank you, Your Honor.

7 THE COURT: 30 minutes good for you as well?

8 MR. LINDER: We can fit it in 30 minutes, Your  
9 Honor.

10 THE COURT: Okay, great.

11 Well, the Government has the burden in  
12 this matter, so if you'd like to proceed, I'll give you  
13 30 minutes. And then, Ms. Keneally, did you want to go  
14 first? I mean, it's your motion, but I thought the  
15 Government has the burden of establishing --

16 MS. KENEALLY: I'm fine with the Court's  
17 pleasure, so if Mr. Linder is ready, I'll listen and  
18 respond.

19 THE COURT: Okay, great.

20 MS. KENEALLY: Thank you.

21 THE COURT: It's not coming up on my screen.  
22 One second.

23 **[Pause]**

24 Well, I have -- is what you're showing me  
25 some of the exhibits?

1 MR. LINDER: It's the exhibits.

2 THE COURT: Okay, I have all the exhibits in  
3 front of me. Perfect. So, if you can just refer to  
4 me -- refer me to the exhibit number or which document  
5 it's in, I can --

6 MR. LINDER: It's Government Exhibit 3.

7 THE COURT: Okay, great. You may proceed.

8 MR. LINDER: Good morning, Your Honor. Robert  
9 Brockman was assessed over \$1.4 billion in tax, fraud  
10 penalties and interest for the years of 2004 through  
11 2018. This jeopardy assessment represents the  
12 largest -- possibly the largest individual jeopardy  
13 assessment case in the history of the United States.

14 The scale of Robert Brockman's fraudulent  
15 activity, which utilizes offshore trusts, offshore  
16 foreign entities, nominees, alter egos in well-known  
17 tax haven jurisdictions is overwhelming and  
18 unprecedented. Mr. Brockman used this offshore  
19 structure to avoid reporting almost \$2.7 billion in  
20 unreported income. He also used this structure to hide  
21 his assets. Mr. Brockman has owned nothing in his own  
22 name, but control of everything is evident throughout  
23 this case. Mr. Brockman's transfers of property and  
24 other actions clearly establish jeopardy.

25 Mr. Brockman would like to ignore all of

1 his past history, have this Court ignore all of his  
2 past actions, have the Court ignore his complex  
3 offshore structure and consider this case in a vacuum.  
4 That is simply not the law. Determination is whether  
5 this IRS's jeopardy assessment is reasonable under the  
6 circumstances. The past history -- the circumstances  
7 include Mr. Brockman's past history.

8           The United States has the burden to show  
9 that the IRS's jeopardy assessment is reasonable under  
10 the circumstances. The burden of proof to show this is  
11 very low. It's akin to a burden for probable cause in  
12 a criminal proceeding. The United States has more than  
13 met its burden. It has produced a significant amount  
14 of evidence, including post-jeopardy assessment  
15 transfer. Mr. Brockman has submitted little evidence  
16 to rebut the United States' case. He has not submitted  
17 any declaration by Robert Brockman, it appears, or  
18 Dorothy Brockman in this case.

19           Mr. Brockman used a complex offshore  
20 structure to hide and control his vast empire.  
21 Brockman's owned nothing, controlled nothing, as set  
22 forth in this structure. This structure was contained  
23 on Government Exhibit 3, which we tried to put up.

24           This structure includes entities and  
25 trusts in known tax havens: Switzerland, Bermuda, The

1 Virgin Islands, Nevis, the Cayman Islands, the Who's  
2 Who of tax havens. This offshore structure consisted of  
3 eight different foreign trusts in Bermuda and at least  
4 14 different foreign corporations in Nevis and in the  
5 Cayman Islands, British Virgin Islands, and Bermuda.  
6 Mr. Brockman also used almost at least 12 different  
7 foreign bank accounts set in Bermuda and Switzerland.

8           Mr. Brockman's offshore complex structure  
9 was designed for one thing: To hide his assets from  
10 the IRS and to hide his income from the IRS.

11 Mr. Brockman had complete control of the structure. He  
12 gave very detailed instructions. He made all the  
13 substantive and strategic decisions, including for one  
14 of the main entities in this with the AEBTC, or what we  
15 refer to it as the Brockman Trust, and all the other  
16 entities associated with this.

17           Mr. Brockman controlled this trust  
18 through his main nominee and employee, Evatt Tamine.  
19 He controlled Mr. Tamine because he controlled  
20 Mr. Tamine's compensation. He controlled other  
21 trustees and trust protectors by having doomsday  
22 documents, pre-signed letters of resignation.

23           The purpose, as I stated, was to hide his  
24 income and assets from the IRS. This isn't conjecture.  
25 This is based on Mr. Brockman's own statements as set



1 forth as evidence in this case. Mr. Brockman referred  
2 to the IRS as "The House." Mr. Brockman made a  
3 statement: You can never tell what crazy things The  
4 House will do as the Brockman Trust is exposed to them.

5 The other structures, referring to Edge  
6 Investments and Cabot Global, need to be kept in the  
7 background with separate charitable trusts, trust  
8 protectors, and underlying companies. A view of  
9 Government Exhibit 3 shows that exact type of ownership.

10 Mr. Brockman went on to state: Take  
11 actions to avoid IRS. No distributions from the  
12 Brockman Trust, as this will draw attention to my  
13 personal returns.

14 Mr. Brockman makes the statement: Worried  
15 about the big activities. Worried about big brother  
16 activities of the United States Government.

17 Mr. Brockman timed purchases. In one  
18 case, in one exhibit, Mr. Brockman refers to: We need  
19 to time the purchase to hide the ultimate beneficial  
20 ownership of the assets, in particular, Spanish Steps  
21 in the Brockman Trust.

22 Mr. Brockman also approved numerous  
23 actions by Mr. Tamine, his nominee. Mr. Tamine came up  
24 with a list of ideas to avoid the IRS. He stated: We  
25 need to set up additional banking relationships for the

1 Brockman Trust, Cabot, Edge, and Regency in separate  
2 jurisdictions to keep these from being frozen. Kill  
3 off all the references to Robert Brockman in foreign  
4 bank documents. Be aware of Robert Smith and the  
5 Albula, the yacht, creates a target for Mr. Brockman  
6 and Tamine.

7           Mr. Tamine also suggests that they should  
8 keep any records they needed in the United States to  
9 conduct business at Brockman's close friend and  
10 physician, Stuart Yudofsky.

11           Also in this email, Mr. Tamine said they  
12 should create a hidden front for Robert Brockman's  
13 legal fees and expenses that has nothing to do with  
14 Robert Brockman or Tamine that they can control, and  
15 disguise a payment of any legal fees and expenses as a  
16 loan from this Trust.

17           All these suggestions by Mr. Tamine to  
18 Mr. Brockman, Mr. Brockman's response: I concur with  
19 all of these. Mr. Brockman was onboard with hiding his  
20 assets and income from the IRS. Mr. Brockman used code  
21 names, aliases. Mr. Brockman referred to himself as  
22 John Barnes. Tamine was [James] Gilbert.

23           Edge Investments and Cabot Global, the two  
24 entities Mr. Brockman tried to keep hidden from the  
25 IRS, these entities were also used to transfer over \$22

1 million to purchase and run real estate in Colorado.

2 Cabot Global --

3 THE COURT: Can I interrupt you just a second?

4 MR. LINDER: Absolutely, Your Honor.

5 THE COURT: I understand the allegation, the  
6 very thing that Mr. Brockman has allegedly done in the  
7 past, but the argument that you make in your briefing  
8 is that you have a reasonable belief that he's  
9 designing to "quickly move assets out of the reach of  
10 the IRS." What's the evidence that he has done  
11 something or has plans to quickly move assets out of the  
12 reach of the IRS?

13 I mean, I understand he's allegedly done  
14 all these things in the past. Mr. Brockman's argument  
15 is: Look, you know where all the money is now. I've  
16 not done anything to try to move it outside the IRS's  
17 jurisdiction.

18 What's the evidence that he has done that  
19 post-Indictment?

20 MR. LINDER: Post-Indictment. Okay, Your  
21 Honor, as you know, Mr. Brockman was aware in April of  
22 2020 that he was going to be indicted, at least by that  
23 date. Around that date in 2020, Mr. Brockman began  
24 selling his stock and receiving distributions from  
25 certain accounts after that -- during that 2020 time

1 frame.

2 THE COURT: Okay.

3 MR. LINDER: And that was reported to the IRS,  
4 these distributions. It was approximately about  
5 \$3.6 million, at least.

6 When the IRS levied in September of 2021  
7 on Mr. Brockman's -- all these known accounts, these  
8 funds were no longer there in these known accounts.  
9 There was approximately \$3.6 million from stock sales  
10 and distributions. And when the IRS levied in on these  
11 known accounts, there was approximately about 163,000  
12 in there.

13 THE COURT: Okay.

14 MR. LINDER: Stock sales. Moving those assets  
15 and transferring those funds. An important discovery  
16 was Mr. Brockman appears to own a property called Lot 16  
17 in Elk Creek Ranch. This was sold to a third party  
18 right after the assessment.

19 THE COURT: Okay.

20 MR. LINDER: In September of 2010, Mr. Brockman  
21 purchased property in this Elk Creek Ranch, Lot 16. And  
22 like his offshore assets, he purchased this property in  
23 the name of an entity -- not in his own name, but the  
24 name of an entity. He concealed his personal ownership.  
25 And in this case it was a Texas LLC, Brockman Elk Creek,

1 Lot 16, LLC. This entity was not disclosed to the IRS.  
2 This entity did not obtain a taxpayer identification  
3 number, an employer identification number. It did not  
4 file any returns.

5 September 7th, the IRS makes the jeopardy  
6 assessment. On September 9, 2021, the United States  
7 informs and serves Mr. Brockman with notice of the  
8 assessments. Within three weeks, Mr. Brockman, through  
9 his wife, who signed the sales documents, transfers the  
10 Lot 16 property to a third party and he transfers at a  
11 loss. After holding the property for 11 years,  
12 Mr. Brockman quickly sold the Lot 16 property.

13 And now Mr. Brockman has produced evidence  
14 that this property and the sales proceeds or the  
15 selling of the sales proceeds went to a bank called  
16 Wallis Bank. What's interesting about Wallis Bank was  
17 when the IRS issued this levy in September 2021, it did  
18 so on all of Robert Brockman's known accounts.  
19 Accounts that were reported to the United States, the  
20 United States levied on all those accounts. One of the  
21 accounts that the IRS did not levy on was Wallis Bank,  
22 because at that time Wallis Bank was either not open or  
23 unknown to the IRS. So it appears during 2021,  
24 Mr. Brockman sold the concealed property, opens up a  
25 new bank account at Wallis Bank, and transferred the

1 proceeds there.

2                   This sale highlights jeopardy, it  
3 highlights -- it's an event because it's telling that  
4 after the IRS made its jeopardy assessment, it filed  
5 tax liens in numerous counties, several counties in  
6 Colorado. One of the counties it did not file the lien  
7 in was Rio Blanco County where this Lot 16 property was  
8 held -- where it was.

9                   And so that enabled Mr. Brockman to sell  
10 the property and then transfer and move the proceeds.  
11 Were those proceeds going offshore? It's unknown, but  
12 the United States was able to levy on an account and  
13 now it's known that those were the proceeds. The fact  
14 that the IRS was able to find out about the sale and get  
15 the proceeds does not relieve jeopardy. It does not  
16 relieve or excuse Mr. Brockman's actions in this case.

17                   Mr. Brockman has other property sales in  
18 this matter. There are several sales of Houston  
19 property. Mr. Brockman was indicted in October of  
20 2020. Within a month, the property at 1731 Sunset  
21 Boulevard was listed for sale and sold within a few  
22 months for 1.375 million. Mr. Brockman bought this  
23 property from his wife -- with his wife in 2011.

24                   In September of 2018, Bermuda Police  
25 executed a search warrant on Brockman's nominee, Evatt

1 Tamine. Shortly thereafter in 2019, Mr. Brockman  
2 transferred the property to his wife. Three weeks  
3 after his Indictment, Mr. Brockman, through his wife,  
4 who signed the deed, quickly transferred this property  
5 to a third party. The location of these proceeds are  
6 unknown.

7 Mr. Brockman will argue that these  
8 properties and other properties are the sole separate  
9 property of Dorothy Brockman. The United States and  
10 the IRS disagree. The fact that a deed is titled in  
11 one name is not dispositive of the true beneficial  
12 ownership or whether it is community property or  
13 separate property.

14 The IRS then investigated. All of these  
15 properties we've been discussing were purchased during  
16 the marriage of Dorothy and Robert Brockman. All of  
17 these properties were purchased with the funds of  
18 Robert Brockman. Dorothy Brockman does not work.  
19 Dorothy Brockman does not have a separate business.  
20 Dorothy Brockman does not have separate income, as set  
21 forth in the declaration. Dorothy Brockman simply --  
22 her income is simply income that is earned by Robert  
23 Brockman, and this is not separate income. So the fact  
24 that they can claim it's separate property, there is  
25 evidence to rebut that presumption, if there is a

1 presumption. So it doesn't make -- it makes the IRS's  
2 determination reasonable under the circumstances.

3 THE COURT: Okay. And I guess what I'm --  
4 another question I have is: So we have evidence of  
5 various transactions, sales, property, transfers. Does  
6 the IRS know where the proceeds for those transfers  
7 have gone?

8 MR. LINDER: No.

9 THE COURT: I mean --

10 MR. LINDER: I'm sorry, Your Honor.

11 THE COURT: Oh, no, no, that's the question.

12 MR. LINDER: No, the IRS does not.

13 THE COURT: Okay.

14 MR. LINDER: One problem with this is that  
15 Mr. Brockman is under Indictment. The IRS is not able,  
16 because of the statute, they cannot summons for  
17 information. They cannot summons and obtain information  
18 to try to trace off these funds. So the IRS does not  
19 know where these sales proceeds are. It does not know  
20 whether the sales proceeds went to other property, or  
21 they went to the Wallis Bank or they went offshore.

22 It's not unlikely that the funds could  
23 have been moved offshore because what we know, one of  
24 the evidences in this case is that sometime in 2020  
25 Mr. Brockman closed two known bank accounts, the Amegy



1 Bank and Wells Fargo Bank. And in that 2020, he  
2 created two new foreign trusts in the Cayman Islands,  
3 and in these two new foreign trusts they created two  
4 new bank accounts in the Cayman Islands. And what we  
5 do know as evidence in this case is Mr. Brockman  
6 actually transferred funds from a closed bank account  
7 to these Cayman Island accounts. If you look at  
8 Government Exhibit 3, these new trusts are not on there.

9 THE COURT: Okay, that's what I was looking  
10 for. You read my mind.

11 MR. LINDER: Yes. Were these trusts  
12 ultimately disclosed and these accounts disclosed to  
13 the United States by Mr. Brockman? Yes, they were.  
14 That doesn't relieve the fact that these actions create  
15 jeopardy. It doesn't relieve the fact that he did not  
16 move funds or may have moved funds there.

17 So there were other property transfers.  
18 Shortly after his Indictment in December of 2020,  
19 Robert Brockman, through Dorothy Brockman, transferred  
20 property worth \$4.1 million. This was in December of  
21 2020. The deed on this property for sale to the third  
22 party actually lists Robert Brockman as the grantor.  
23 And Dorothy Brockman signs this deed as a grantor on  
24 behalf of Robert Brockman, using a Power of Attorney.

25 There was also property gifted during

1 that time period. There was property gifted to their  
2 daughter -- their daughter-in-law. Mrs. Dorothy  
3 Brockman purchased this property in January of 2020.  
4 Mr. Brockman and her were married at the time. The  
5 property was purchased with Mr. Brockman's income or  
6 community income. And then it's held for 10 months.  
7 And one month after his Indictment, it's gifted. This  
8 is also evidence of quickly designing or appears to be  
9 designing to move property out of control or away from  
10 the United States.

11 There's also another sale. There's the  
12 sale of a small interest in the company. This sale,  
13 while small in numbers, highlights to the extent of  
14 Mr. Brockman appearing and trying to move property  
15 beyond the reach of the Government. This sale is  
16 called a one percent interest in a company called  
17 Hardwicke. Hardwicke, LLC had a one percent interest  
18 in an entity that held several planes. Mr. Brockman  
19 held this interest in Hardwicke, this one percent  
20 interest, some eight years. Within six months of his  
21 Indictment, this interest was sold to a party for  
22 \$288,000 in cash. Dorothy Brockman actually signed the  
23 sales documents for this on behalf of Robert Brockman  
24 as her Power of Attorney.

25 What's interesting about this sale is

1 Hardwicke, LLC is contesting the lien in the  
2 collections actions against it. And their contestment  
3 is that the United States cannot maintain an action  
4 against Hardwicke because Robert Brockman sold this  
5 interest prior to this jeopardy assessment and prior to  
6 the liens.

7               So Brockman's sale of this interest is a  
8 move due to evade collection. Now the IRS find this  
9 cash, it must chase this cash around. This quick  
10 disposal of an asset after his Indictment is an action  
11 to place property beyond the reach of the Government.  
12 It is reasonable to view it that way.

13               All these amounts may seem small in  
14 comparison to \$1.4 billion. They are all actions to  
15 place property beyond the reach of the Government.  
16 It's interesting to note that almost all these assets  
17 are Mr. Brockman's U.S. based assets where the United  
18 States can take collection action. If they were so  
19 small and insignificant, why make the post-petition --  
20 why make the post-Indictment transfers? Why make the  
21 transfer -- why make the transfers right after the  
22 jeopardy assessment, other than to move property away  
23 from the Government. The timing is suspect. What you  
24 won't have is there is no evidence from Dorothy  
25 Brockman or Mr. Brockman of why they made these

1 transfers or why they did this. The evidence in the  
2 case of why they did transfers is just statements by  
3 counsel.

4           One of the items that's been brought up  
5 has been numerous statements made about the mistakes  
6 the United States made in this case. There were no  
7 mistakes in the jeopardy report. There was no  
8 mistakes -- the Government in this case simply has a  
9 wrong in a chart, and on that date they have a  
10 partially incorrect statement. The Government -- the  
11 attorneys for the Government in this case were notified  
12 of this and promptly corrected it by a Notice of  
13 Correction.

14           What's interesting is, while everyone  
15 wants to focus on -- the opposing counsel and  
16 Mr. Brockman want to focus on this mistake by the  
17 attorneys is they don't want to focus on the underlying  
18 exhibits. The underlying exhibits have the correct  
19 dates on them. The underlying exhibits in this are  
20 Government Exhibit A-61. They show Mr. Brockman's  
21 control -- control of offshore bank accounts. In the  
22 bank accounts in this particular instance, they had  
23 user names and passwords for at Bank Mirabaud in  
24 Switzerland. The accounts were Spanish Steps Holdings  
25 and Point Investments. While the Government made a

1 small mistake, it corrected its mistake, and that's all  
2 it was is a mistake, a scrivener's error, like a  
3 mistake. What's interesting is we should focus on the  
4 evidence that was underlying that.

5           There's been a repeated argument on behalf  
6 of Mr. Brockman that no jeopardy exists because the  
7 Government could theoretically collect from Reynolds  
8 and Reynolds. Brockman asserts that if the  
9 Government proves its case, which I'm not exactly sure  
10 which case -- the jeopardy case, the tax case, or the  
11 criminal case -- Mr. Brockman would then be an indirect  
12 owner of that entity.

13           And then the Government, I guess, in the  
14 recent filing, would then have to go out and get a  
15 judgment from a Court, from the U.S. Court, saying that  
16 Mr. Brockman is a direct owner. And then the  
17 Government could theoretically collect against Reynolds  
18 and Reynolds. That's simply not the standard.  
19 Basically, that's nullifying the jeopardy statute.  
20 Requiring the Government to prove its case, to prove  
21 the tax liabilities, then prove non-entity ownership,  
22 and to overcome this layered up ownership, is simply  
23 not what the jeopardy statute is for.

24           This also ignores the layered up ownership  
25 of this entity. The Brockman Trust, AEBCT, owns

1 Spanish Steps Holdings, a Nevis company, which in turn  
2 owns Spanish Steps Holdings, LTD, which is a company  
3 in the British Virgin Islands, which then owns a U.S.  
4 company, USCHS, which is in Delaware, which owns Dealer  
5 Computer Services, which then owns Reynolds and  
6 Reynolds. This layered ownership not only helps  
7 establish the factor for jeopardy assessment, but it  
8 also shows the impossibility or the theoretical  
9 problems with asserting that the Government could  
10 collect from this entity at any time it wanted to.

11           The United States knows that Reynolds and  
12 Reynolds is not a public owned company. Thus, the  
13 entities that hold the ownership of this could sell  
14 their stock or move their assets just as Mr. Brockman  
15 sold his one percent interest in Hardwicke and his Lot  
16 16 property in Colorado. These entities could pledge  
17 their stock. They could encumber all these assets.  
18 These assets are simply available.

19           Also, in this case, which has been the  
20 subject of numerous briefs the Court is probably tired  
21 of reading, is this theoretical letter proposal from  
22 the BCT Trustees.

23           THE COURT: That was my next question. I'm  
24 glad you're getting into that because I wanted to find  
25 out what's the status of that? Is it -- what's your

1 understanding as to whether or not Mr. Brockman is able  
2 to post a bond or not?

3 MR. LINDER: The status of that is those funds  
4 that are held in Switzerland are frozen by the Swiss  
5 prosecutors. We have now been authorized that the  
6 Swiss prosecutors informed the Government that these  
7 funds are frozen and they are not available for use.  
8 The Swiss prosecutors informed the Government at times  
9 that they read about this BCT letter in a news article  
10 and they promptly notified the Government that they had  
11 frozen the account and the funds are no longer -- the  
12 funds are not available for use and they will not  
13 available for use.

14 Unfortunately, while the Government  
15 disclosed that the funds were frozen, we couldn't  
16 provide all the details. We weren't authorized to  
17 provide that until just recently. We would have liked  
18 to have disclosed all that. The attorneys in this case  
19 simply weren't able to do so, so those funds were never  
20 available for use. We can argue all about if it was a  
21 prosecutor freeze or it was frozen, but the funds were  
22 never available.

23 Mr. Brockman is telling the Court that no  
24 jeopardy existed. This letter and this proposal were  
25 wholly determinative of the idea that this was all

1 collection concerns for the United States and the Court.  
2 And based on this one theoretical proposal that  
3 couldn't happen, based on the jeopardy assessment, it  
4 must be abated and the jeopardy levy released. What it  
5 shows is that it was impossible from the start, it's  
6 impossible from the get-go.

7 And this theoretical proposal --

8 THE COURT: Oh, I'm sorry, one other question.

9 MR. LINDER: Yes.

10 THE COURT: Do you know or have you had any  
11 conversations with Mr. Brockman's representatives about  
12 any other assets that might be available to support the  
13 bond?

14 MR. LINDER: No, Your Honor. The only -- I  
15 think what we said this in the last hearing before the  
16 Court was that we had -- with the IRS representative,  
17 on the phone, we did have one discussion with the  
18 attorneys, the U.S. Attorneys for the BCT Trust, and  
19 they were inquiring about how to post a bond, what were  
20 the requirements, and we had discussed that. It was  
21 about half an hour conversation. At that point there  
22 was never any assets posted. There weren't any  
23 recommendations we could do this.

24 The United States points out that since  
25 that time -- this was in April -- there have been no



1 discussions with the United States. There's been no  
2 contact between BCT Trustees or, to our knowledge, that  
3 Mr. Brockman's representatives have contacted the IRS  
4 or the United States about posting a bond. Simply,  
5 there has been no bond, there is no stay of collection.

6 THE COURT: Okay.

7 MR. LINDER: And I think what's important about  
8 this theoretical proposal is this is the same type of  
9 theoretical proposal that the IRS, the Government,  
10 could just collect from Reynolds and Reynolds whenever  
11 it wanted to. And like that letter, it's a theoretical  
12 proposal that doesn't cut bait. Theoretical proposals  
13 are potential or theoretical, and ideas simply do not  
14 satisfy the jeopardy, does not resolve the jeopardy  
15 assessment.

16 There were lots made about the  
17 Government's actions or claiming that the Government  
18 completely got the Bermuda litigation wrong, it failed  
19 to understand the Bermuda litigation. Well, the  
20 Government would point out that most of the litigation  
21 filings in the Bermuda cases aren't available to the  
22 public.

23 And regards to whether the Government got  
24 it wrong or right, it's not whether the Government is  
25 exactly right that jeopardy will be -- that the

1 collections are in jeopardy, it's whether it might be,  
2 whether it appears to be, whether the IRS's review is  
3 reasonable, whether the IRS's belief is that the  
4 Bermuda litigation was instituted to move control or  
5 keep control of the offshore empire -- in this case it  
6 is the Brockman Trust -- offshore. And that's exactly  
7 what happened. The BCT Trustees are located in the  
8 Cayman Islands. They've admitted they're going to be  
9 subject to Bermuda law, but the control of that trust  
10 still remains offshore.

11                   An important note is that when  
12 Mr. Brockman and Mrs. Brockman had the -- when they  
13 were looking at trustee, they did not domesticate the  
14 AEBTC or this Brockman Trust back to the United States.  
15 They could have easily moved control back to the United  
16 States. They chose not to. They chose to keep it in a  
17 tax haven.

18                   So, again, the IRS, was exactly it right  
19 on all the Bermuda litigation? Probably not. But  
20 their belief that the litigation was instituted to keep  
21 control of this asset overseas, is not only reasonable,  
22 but it looks like that is exactly what happened.

23                   THE COURT: One second. I think you're almost  
24 out of time, but just one second. Counsel, hold on for  
25 just one second.

1                   **[Pause]**

2                   Okay, counsel, you may proceed.

3                   MR. LINDER: Your Honor, one of the things  
4 that I think we're going to do at this hearing is  
5 Mr. Brockman relies extensively on a case called *Fumo*  
6 *vs. The United States*. I have some case citings I  
7 think the Court is aware of it. I can provide it.

8                   This case is an outlier. No other  
9 District Court has followed this case. The one  
10 District Court that has cited the case, it cited it for  
11 the standard that the review here is *de novo*. This is  
12 the *Kalkhoven vs. United States* case. This is 2021  
13 Westlaw 4206767. It's out of the Eastern District of  
14 California.

15                   In this case, it's the very same -- it's  
16 actually making the very same argument based on *Fumo*,  
17 that a sale of property, if it was disclosed publicly  
18 with a public sale, there could be no jeopardy. The  
19 Court in *Kalkhoven* did not find this argument  
20 persuasive and decided that it is reasonable for the  
21 IRS to conclude, in this case *Kalkhoven*, could place  
22 and would place sales proceeds beyond the reach of the  
23 Government. It rejected the idea that a sale that was  
24 a public sale was not -- did not appear to or could not  
25 be considered as moving quickly.

1                   In *Fumo*, one of the most distinctive facts  
2 that makes that case completely different from this one,  
3 throughout that case the Court brought up the main fact  
4 that in *Fumo* the IRS notified the taxpayer in October  
5 of 2012 that there were going to be additional  
6 assessments, additional tax liabilities that he was  
7 going to be liable for. It didn't assess. It waited  
8 then until March of the next year and then it did a  
9 jeopardy assessment. And the Government admitted --  
10 the IRS admitted that in October there was no jeopardy  
11 when they did this. The jeopardy was in March. And  
12 there were no intervening facts.

13                   That does not exist in this case. At no  
14 point has the Government said that there has been no  
15 jeopardy or admitted there was no jeopardy in this  
16 case. And if you consider that the Indictment was  
17 notifying Mr. Brockman of potential liabilities, the  
18 United States has went and outlined numerous  
19 post-Indictment transfers. But the main fact in that  
20 case doesn't exist.

21                   In *Fumo*, also in regard to property  
22 transfers, the taxpayer in *Fumo* maintained an interest  
23 in the property. The Government has outlined in its  
24 briefing, and certainly today, many of the properties  
25 that were transferred are transferred to unrelated

1 third parties. So the IRS may not be able to proceed  
2 against those properties.

3 And unlike in *Fumo*, the taxpayers in *Fumo*  
4 submitted declarations outlining and detailing their  
5 transactions and why they did them. There is no such  
6 declarations filed in this case.

7 In closing, Your Honor, the United States  
8 has produced overwhelming evidence of Brockman's past  
9 history, his current conduct. We have opening  
10 accounts, opening foreign accounts, closing U.S.  
11 accounts after his Indictment, selling stock, receiving  
12 distributions, moving the proceeds from those sales and  
13 distributions to some unknown account. We have  
14 property sales after the Indictment. We even have a  
15 property sale close to jeopardy assessment.

16 The United States' burden is low in the  
17 case. It believes it has overwhelmingly produced  
18 evidence to support its jeopardy assessment. The IRS's  
19 actions were reasonable based upon the circumstances,  
20 and we believe the jeopardy assessment should be  
21 upheld, and we request the Court deny Mr. Brockman's  
22 motion and uphold the jeopardy assessment.

23 THE COURT: Thank you, counsel.

24 ***[Pause while Elmo is set up]***

25 Ms. Keneally, you may proceed.

1 MS. KENEALLY: Good morning, Your Honor. I  
2 appreciate that the Court looked to the issue of  
3 whether Mr. Brockman is designing quickly to do  
4 anything. And unfortunately, I need to start today  
5 with an update as to how Mr. Brockman is --

6 THE COURT: Okay.

7 MS. KENEALLY: -- because the Court inquired.

8 As the Court knows, he's in hospice care.  
9 Since I think middle of last week, he's been treated  
10 with morphine. His body is no longer tolerating food  
11 or liquid. So at this point going forward, Mr.  
12 Brockman is not designing to do anything. That's where  
13 we start today.

14 THE COURT: Okay.

15 MS. KENEALLY: Jeopardy assessment is a rare  
16 tool for the Government. The IRS has -- and I respect  
17 this. The IRS has tremendous tools to collect once  
18 it's been determined that somebody owes tax. Whether  
19 that tax is reported on a tax return and not paid or  
20 whether that tax is determined at the end of an IRS  
21 examination or the IRS appeals process or Tax Court or  
22 Federal Court, the IRS has tremendous tools to collect.  
23 They can go immediately to the banks and into  
24 somebody's bank account. They can lien and sell  
25 property, and there's reason for that.

1                   But the jeopardy assessment lets the IRS  
2 jump ahead. It lets the IRS jump ahead of determining  
3 whether there is a tax liability and simply begin to  
4 take assets and to grab assets. And there's a reason  
5 it's there and there's a reason that it's internally in  
6 play.

7                   In the common case -- and the Government  
8 has a lot of cases in their papers -- the only times  
9 we see jeopardy assessments made, there's cash at the  
10 Border, there's a stop and there's cash in the trunk of  
11 the car, there's a gambling operation, there's illegal  
12 source income, and you grab that money. And from the  
13 enforcement point of view, that makes sense.

14                  Or there is actually action. Jeopardy  
15 assessment can be done on three criteria: One of them  
16 is quickly designing to leave, somebody who's going;  
17 quickly designing to remove the assets; they're  
18 becoming insolvent without regard to the possible tax  
19 liability, don't consider the tax liability. The only  
20 one here is the quickly designing. That's the only  
21 issue here is whether he was quickly designing to  
22 remove assets.

23                  And jeopardy assessment is not there to  
24 keep somebody from living their lives while there is a  
25 tax dispute. So, yes, Mr. Brockman was indicted in

1 October '20. Everybody -- you know, well known,  
2 Mr. Brockman was indicted in '20. And there is now a  
3 matter pending in the Tax Court, which is one of the  
4 consequences of the jeopardy assessment is the taxpayer  
5 has the right to go to the Tax Court immediately with a  
6 matter pending in the Tax Court.

7               So, again, I know we have the other case.  
8 It's looking more likely we're going to have a criminal  
9 determination and we'll address that in the other case.  
10 But the Tax Court case will continue. It will continue  
11 against Mr. Brockman's Estate and it will determine  
12 whether or not he owes taxes. That's not for this  
13 Court to decide. The IRS says he does. We say he  
14 doesn't. The IRS doesn't get to shut down people  
15 living lives inbetween unless they can show somebody is  
16 designing quickly. So to the extent --

17               THE COURT: I agree with you on that argument.  
18 I guess the quick question I have -- and I didn't mean  
19 to interrupt, I know you've got a lot. But the one  
20 thing that I asked counsel for the Government about  
21 and I wanted to ask you is that these assets are being  
22 transferred in a way that the IRS cannot track down  
23 after they have been transferred. That is, you know,  
24 that the purchases or the sales and the transfers,  
25 there's nothing wrong with the purchases, the sales,



1 and the transfers. It's that the proceeds can't be  
2 tracked once it happens.

3 I want you to kind of talk to me about  
4 the IRS's position that basically this money is going  
5 places that there is no way to track it for later  
6 collection if it turns out there is a liability.

7 MS. KENEALLY: And, Your Honor, that's why we  
8 put together the deck because there's been an enormous  
9 amount of paper here. And we listed up and went  
10 through the IRS's allegations about actions that are  
11 current. We want to walk through what those actions  
12 are.

13 THE COURT: Okay.

14 MS. KENEALLY: And they've been raised at  
15 three separate times. And we certainly agree with the  
16 Government. The Government can continue to supplement  
17 and say, "We learned something new." That is the law  
18 of jeopardy assessment. But they've made three  
19 allegations at three different times.

20 The first, which is summarized on page 3,  
21 and I'm going to go through those three first -- page 3  
22 of the deck -- are the grounds on which the IRS based  
23 its action. So the case begins with a jeopardy  
24 assessment supported by a jeopardy recommendation  
25 report by the IRS. Three issues:

1                   Four real property transactions by Dorothy  
2 Brockman, the issues concerning the Bermuda litigation,  
3 and the investigation -- the underlying investigation.

4                   So let me turn to slide 4, which describes  
5 the four transactions.

6                   THE COURT: Okay.

7                   MS. KENEALLY: These are four transactions of  
8 people living their lives. So the four properties are:

9                   Mr. and Mrs. Brockman's former residence.  
10 They moved from one home in Houston to another home in  
11 Houston, and they moved to a smaller home closer to  
12 their son, daughter-in-law, and now two children. So  
13 the babies have been born in the last three years. And  
14 this is, again, Dorothy Brockman planning her life.  
15 She puts that property up for sale. That property has  
16 been in her name for 25 years and she puts that  
17 property up for sale.

18                   And there's a vacant lot next to it and  
19 that property is sold.

20                   The next piece of property of their four  
21 is a townhouse that was in Mrs. Brockman's name. This  
22 is where Mr. Linder focused on in particular. Again,  
23 it was in Mrs. Brockman's name. When it was sold, her  
24 son was residing in it before his marriage. After his  
25 marriage and as they expected a child, they moved to

1 another home. She sells that home.

2 And then there's the property that she  
3 gifts to her daughter-in-law, again in anticipation of  
4 the birth of her first grandchild.

5 Those properties -- and again, Mr. Linder  
6 can comment on the *Fumo* case, when you are in jeopardy  
7 assessment cases, we only have just the Court opinions  
8 because it's non-appealable. This Court is the sole  
9 safeguard. The District Court is the sole safeguard in  
10 the statute that's for jeopardy assessment. And the  
11 cases are fact-specific among other cases, but *Fumo* in  
12 particular says, if you can trace the transactions  
13 through public records, then you're not designing  
14 quickly to hide them from the Government. These are  
15 open sales. These are things the Government learns  
16 about because they're listed. The real estate sales  
17 are listed. The fact that they occur are listed. The  
18 transactions are understandable.

19 THE COURT: I agree with that, but do you  
20 dispute, or what's your position on the Government's  
21 apparent argument that we can trace the transactions,  
22 but we can't trace the money?

23 MS. KENEALLY: So, Your Honor, I will  
24 acknowledge, we have not come back and traced all the  
25 dollars and where they went, but I want to talk about

1 the Wallis Bank account right now.

2 THE COURT: Okay.

3 MS. KENEALLY: And I want to talk about these  
4 two closed accounts that happened with Amegy and Wells  
5 Fargo and the Wallis Bank account. Mr. Brockman was  
6 indicted in October of 2020. The banks throw them  
7 out. Again, the banks say: Okay, you know, notorious  
8 enemies, go find another bank. They move their bank  
9 accounts to the Wallis Bank account. The Government  
10 has seized the Wallis Bank account. The Government has  
11 seized tens of millions of dollars from the Wallis Bank  
12 account, and nobody touched that money other than to  
13 live their lives. Other than to pay expenses and do  
14 whatever they were doing, that money was sitting there  
15 when the Government issued a levy and took the funds  
16 from the Wallis Bank account.

17 And the levy for the Wallis Bank account  
18 is in the records. If you need us to get the bank  
19 records, you can see how much was there. They seized  
20 Mrs. Brockman's account, the joint account, and  
21 Mr. Brockman's account. So I can't stand here and tell  
22 you that the proceeds from this sale went into that  
23 account and this sale went into that account, but I can  
24 tell you the Brockmans left tens of millions of dollars  
25 sitting in a bank account -- three bank accounts --

1 after the levy issued.

2 Also, in terms of the public disclosure  
3 here, Your Honor --

4 THE COURT: I mean, one quick question. Is  
5 that fact in anything that I have? Because that wasn't  
6 clear to me when I looked at -- I mean, I admit, I  
7 looked at a lot of exhibits. Is that fact of what was  
8 left in the accounts in some of the evidence that's  
9 been presented to me?

10 MS. KENEALLY: No, Your Honor. We can  
11 supplement the record with the information as to the  
12 balances in each account.

13 THE COURT: Okay, because I didn't remember  
14 seeing. I'd like you to do that.

15 MS. KENEALLY: We'd be happy to do that.

16 THE COURT: Okay.

17 MS. KENEALLY: To show the balances that were  
18 in those accounts. Again, if the Court wants, we'll  
19 trace the dollars. I mean, you know, we'll trace the  
20 dollars. Some of it's going to go -- some of it's  
21 going to go to legal fees.

22 THE COURT: I'm not -- I don't want that.  
23 It's just that you made an argument that they took  
24 money and there was still lots of money left in the  
25 account. That's a very persuasive argument that if

1 they're trying to, you know, put money outside the  
2 reach of the IRS, that there was still significant  
3 money in those accounts.

4 MS. KENEALLY: Tens of millions.

5 THE COURT: Tens of millions. I didn't see  
6 that in the evidence. So, if you can submit that, that  
7 is to me evidence to support the argument that there is  
8 no effort to -- you know, there are designs to quickly  
9 move assets outside the reach of the IRS.

10 MS. KENEALLY: Your Honor, because the  
11 accounts are now closed, it takes us a little bit of  
12 time to get the bank to get its records, but we'll  
13 promptly be about supplementing the record to show you  
14 what was in the Wallis account when those accounts were  
15 seized.

16 THE COURT: Okay.

17 MS. KENEALLY: The other points are just to  
18 complete on the -- because this is going to be  
19 something that comes up again in terms of what it means  
20 to design quickly to move assets out of the reach of  
21 the Government.

22 One of the things that is the antithesis  
23 of moving assets out of the reach of the Government is  
24 telling the Government about your transaction. And in  
25 the case of Mrs. Brockman's transfer of the gift to her

1 daughter-in-law, she reports a gift tax to her. And in  
2 the case of the fact that her son was using the  
3 property as his residence, she reports the fair market  
4 value of the property on her gift tax account. This is  
5 not about people hiding things.

6 And yet the other thing I do want to --  
7 in terms of the funds that are being seized, these are  
8 after-tax dollars. It's not true that Mrs. Brockman  
9 never worked and it's not true that Mrs. Brockman never  
10 earned income. It is true that she did not earn the  
11 income that her husband earned from Reynolds. But the  
12 funds we are talking about here, the funds that are  
13 being seized right now, are funds that were paid --  
14 and the assets that are purchased here, there is no  
15 evidence that any of this came from any of the offshore  
16 activity. The assets here are purchased. The funds  
17 are received from Mr. Brockman's income at Reynolds,  
18 from investments that the Brockmans made, from some  
19 investments after the Brockmans -- the Brockmans split  
20 income, something you can do under Texas law. These  
21 are after-tax dollars, for want of a better statement.

22 THE COURT: Ms. Keneally, can you hold on just  
23 one second.

24 **[Pause]**

25 You may continue.

1 MS. KENEALLY: So I'm going to turn briefly to  
2 the Bermuda proceedings.

3 THE COURT: Okay.

4 MS. KENEALLY: You know, just briefly to the  
5 Bermuda proceedings.

6 Mr. Linder stood up and the Government  
7 often in its papers talks about that the Government  
8 needs to show that the IRS acted reasonably under the  
9 circumstances. In their papers they actually refer to  
10 it as reasonable belief in what they're doing.

11 It can't be a reasonable belief once they  
12 find out it's not correct. They can't stand here  
13 today -- in my view at least, my argument would be they  
14 can't stand here today and say, "Well, at the time we  
15 thought something was going on in Bermuda." We now see  
16 from the Bermuda Court opinion that nothing was going  
17 on in Bermuda, but we should continue with the jeopardy  
18 assessment because there's reasonable belief. That's  
19 first.

20 And then second, it's simply not true that  
21 there wasn't access to the Bermuda proceedings. The  
22 Bermuda Court of Appeal argument was a three-day public  
23 argument. You could watch it on the Internet. It was,  
24 you know, open. And the decision is not -- it's not  
25 sealed, it's not secret. And what the Court in Bermuda



1 did was appoint BCT as an independent institutional  
2 trustee. So whatever charts you want to show that what  
3 was happening, you know, since 1981 to 2018, today the  
4 trust, the ABCT, is controlled by an independent  
5 trustee appointed by the Bermuda Court after vetting by  
6 the Bermuda Court. And that happened seven months  
7 ahead of the jeopardy assessment.

8               So, again, I think we should take the  
9 Bermuda proceedings off the table. But I do want to  
10 address, whatever it is they find and why ever they  
11 thought it, it's not true today. You know, it's not  
12 correct and they can't -- it wasn't true at the time  
13 and they can't base a reasonable belief on something  
14 that's really shown not to be correct.

15               THE COURT: Okay.

16               MS. KENEALLY: Briefly to the next slide, Your  
17 Honor, because I think that you addressed it. The  
18 allegations in the Indictment go through 2018. The  
19 Notice of Correction is based on the letter from  
20 counsel for Evatt Tamine, who says in the letter  
21 there's been no communication, no activity, no  
22 involvement by Mr. Brockman in the offshore structure  
23 since 2018. So, I mean, I'm happy to talk about it,  
24 but I think, Your Honor, you already answered the  
25 question, so I don't want to draw on something unless

1 you want to hear more about that. But it's not  
2 current, you know, the assets.

3 THE COURT: Okay.

4 MS. KENEALLY: So I want to move to the next  
5 set of allegations, and these come together. And  
6 again, we're not disputing. The Government can -- if  
7 the Government finds some information, they can bring  
8 it to the Court's attention. If we find any  
9 information, we can bring it to the Court's attention.  
10 It's the nature of the jeopardy assessment proceeding.

11 But in their January 21 opposition there's  
12 a list. There's a list of transactions where they're  
13 saying: Take a look at these transactions. You know,  
14 these are transactions that the Brockmans are engaging  
15 in -- sometimes Mrs. Brockman, sometimes Mr. Brockman.  
16 These are transactions the Brockmans are engaging in.  
17 The reason they know about these transactions is  
18 they're reported. They're reported to the Internal  
19 Revenue Service.

20 So, if you take a look, Your Honor, just  
21 to pull it all together in one place, on slide 8. So  
22 the first transaction which Mr. Linder specifically  
23 focused on, this sale of the one percent interest of  
24 Hardwicke from Mr. Brockman to Reynolds. Hardwicke  
25 owns a corporate jet. Mr. Brockman -- in his condition

1 physically at the time, he had retired and he's no  
2 longer going to be traveling for business, and without  
3 question he is physically deteriorating. He sold the  
4 one percent interest -- he sold the one percent  
5 interest in the company that owns a corporate jet to  
6 the company that owns the other 99 percent.

7           And the Government knows about this  
8 because I told them about it. When the jeopardy  
9 assessment issued, the jeopardy assessment issued, one  
10 of the things that the Government raised specifically  
11 were earlier transactions involving the plane. And we  
12 said: No longer Mr. Brockman's. It was sold. So this  
13 is not something anybody tried to keep secret. And this  
14 is, again, a living your life kind of transaction.

15           Every other transaction that they cite,  
16 every other one is reported to them either by  
17 Mr. Brockman or on behalf of Mr. Brockman. These are  
18 not concealed, these are not hidden. And the list of  
19 the transactions that I can -- if the Court wants, I  
20 can go through each of the transactions. But the list  
21 of the transactions in the form that they are reported  
22 on, again, there's case law that supports that you  
23 can't be acting quickly, designing quickly to move your  
24 assets outside of the reach of the Government if what  
25 you are doing is you are telling the IRS on IRS forms,

1 "This is my transaction, this is what I'm doing."

2 THE COURT: Well, unless you're -- unless  
3 there is no way to trace the assets, the proceeds from  
4 those sales and transactions. I mean, the argument the  
5 Government is making on that, and that's why I asked  
6 the question earlier, you know about the transactions,  
7 but you don't know about where the proceeds went, so  
8 that if an assessment does need to be made, you can try  
9 to track those moneys down, or have moneys to satisfy  
10 the judgment.

11 MS. KENEALLY: Again, Your Honor, first of  
12 all, they never asked. And I heard Mr. Linder say,  
13 because of the criminal case, they couldn't issue  
14 summonses. But, in fact, they could have issued  
15 summonses to the banks. Setting aside Mr. Brockman's  
16 Fifth Amendment rights, what we may or may not have  
17 answered, they could have issued summonses to the  
18 banks.

19 THE COURT: Okay.

20 MS. KENEALLY: They could have issued  
21 summonses to Wallis and Amegy and found out -- to Amegy  
22 and -- sorry.

23 MR. VARNADO: Wells Fargo.

24 MS. KENEALLY: Wells Fargo, thank you.

25 -- and seen the transfers to Wallis.

1 THE COURT: Okay.

2 MS. KENEALLY: I mean, it wasn't -- it wasn't  
3 hidden, it was -- you know, it was traceable, it was  
4 openly there. That's first.

5 Second, if you are going to hide assets,  
6 you genuinely don't tell the IRS, "By the way, I  
7 engaged in this transaction and then I'm going to go  
8 hide the assets."

9 Third, they don't get to just speculate.  
10 They don't get to just say, "Wow, we don't know where  
11 the assets went, so we're just going to speculate that  
12 they went out of our reach." I mean, that's just --  
13 you can't base a jeopardy assessment on "woulda coulda,"  
14 might have.

15 And then to go back to what's the  
16 fundamental point, which is what we need to supplement  
17 the record with, there was just tens of millions of  
18 dollars setting in the Wallis account. So, whether  
19 each of these transactions traces it to there, again,  
20 if the Court wanted that, we could do that, but they  
21 don't -- the assets stay here, you know. There's just  
22 so much money that's sitting here.

23 THE COURT: Okay.

24 MS. KENEALLY: And then we come page 9, Lot 16,  
25 the sale of Lot 16. And here again, I'm not saying the

1 Government said anything incorrect. The Government  
2 said they don't know what happened to the funds that  
3 came out of the sale of Lot 16. I appreciate that,  
4 they didn't know.

5 But, you know, there's a -- you know,  
6 there's a famous old closing statement that I think it  
7 was Edward Bennett Williams used to do when he talked  
8 about "seeing the world through dirty windows and then  
9 you see dirt on everything." They don't get to look  
10 through a dirty window and say, "We don't know where  
11 the money went, so it must have gone outside of our  
12 reach."

13 This is in the record. It went into the  
14 Wallis Bank account in Mr. Brockman's name, and it  
15 stayed there even when he knew, we knew, Mrs. Brockman  
16 knew, because we have cognitive issues with  
17 Mr. Brockman, but where everybody knew that the levy  
18 was out there. They found the Wallis account, they  
19 took the Wallis account. So the sale of Lot 16 is not  
20 moving assets outside of the Government's reach.

21 So those are the -- just to pause, I want  
22 to pause here for a moment, Your Honor, to ask if you  
23 have questions, because that's it. Those are the  
24 things they're saying are the designing quick reacts,  
25 and that's the summary on that.

1 THE COURT: Well, I think I've got that and I  
2 think both sides have covered my questions thoroughly.

3 The next issue I had was on the bond.

4 MS. KENEALLY: Right.

5 THE COURT: What was that all about? I mean,  
6 because the last hearing you represented that, you  
7 know, there was money that could be posted as a bond,  
8 but these assets in Switzerland take care of  
9 everything. We can move on down the road. And now it  
10 looks like that's not the case.

11 MS. KENEALLY: So I want to put the bond issue  
12 into context. And, yes, Your Honor, the last time I  
13 represented that to the best of my knowledge, those  
14 assets were not frozen.

15 THE COURT: No, I'm not implying that you've  
16 made any misrepresentations. I just, you know --

17 MS. KENEALLY: And to the best of my  
18 knowledge, those assets were not frozen.

19 THE COURT: Right.

20 MS. KENEALLY: And but the bond is not  
21 something Mr. Brockman can post. The bond is something  
22 that BCT, as the trustee for the A. Eugene Brockman  
23 Charitable Trust, is looking into posting.

24 And the reason that the BCT -- and BCT has  
25 been very upfront about this and this is in the record

1 in BCT's correspondence. The reason that BCT believes  
2 that it's in the trust's interest to do this is because  
3 Reynolds is at risk. If the Government does prevail  
4 in the Tax Court case or in the Criminal Case -- and  
5 Mr. Linder said he doesn't know which case. But either  
6 case, if the Government prevails, you have a Court  
7 Order that says the trust is a sham and that Reynolds  
8 belongs to Mr. Brockman at that point.

9           And Reynolds is a U.S. company that is  
10 owned by a U.S. company that is owned by a U.S.  
11 company, and then that holding company is ultimately  
12 owned in the trust structure. But you've got three  
13 U.S. companies that report taxes here, operate here,  
14 you know, have business, and nobody disputes that  
15 Reynolds itself is worth in excess of \$5 billion.  
16 There's never been any pushback on that suggestion.

17           The trust had two issues: The pendency in  
18 the jeopardy assessment was causing the trust to have  
19 problems in its own operations. It's got banks going,  
20 you know, "Are you going to be liable?" And the trust  
21 does charitable work, the Brockmans have never received  
22 a single distribution from the trust. The trust makes  
23 charitable distributions.

24           And the trust, so it's own operation is  
25 potentially impaired by the pendency of the jeopardy



1 assessment, and so Reynolds is potentially jeopardized  
2 down the road. And so the trust stepped forward and  
3 said: We want to post cash instead so that we can move  
4 on as the trust and run the valuable asset of Reynolds  
5 and we can get back to our operations. Cash is sitting  
6 there in an account in Switzerland.

7           What happened is that the bank, Mirabaud,  
8 never told the trust there was a freeze order. The  
9 Swiss prosecution never told the trust that there was a  
10 freeze in place. And so BCT and Spanish Steps, as the  
11 actual account holder and their Swiss counsel, thought  
12 that the only issue that was pending was whether -- was  
13 waiting until the Bermuda order appointing BCT could be  
14 domesticated in Switzerland. But, yes, we do now know  
15 that there is a freeze in place on the account. That's  
16 a fact.

17           And there are ongoing discussions. This  
18 is a declaration that was submitted by counsel for the  
19 trust that would be in the record. There are ongoing  
20 discussions right now, ongoing communications right now  
21 between counsel for Spanish Steps as the account  
22 holder, which is owned by the trust, is controlled by  
23 BCT, and the Geneva Prosecutor's Office, to determine  
24 whether some of those funds can be made available to  
25 post the bond. So that issue remains open. And it's

1 not my place to say what the chances are or where they  
2 are, nor what I think -- you know, I think it's  
3 sufficiently sensitive that they need to have those  
4 discussions.

5 But from Mr. Brockman's point of view, I  
6 want to be clear why we raised the question of the trust  
7 willingness to post a bond, which is we requested a  
8 stay of collection so that the Brockmans could be  
9 living their lives, dealing with their bank accounts,  
10 finally selling the home they don't live in any more,  
11 while we see if these funds can come through.

12 Because what we're talking about here,  
13 Your Honor, and Mr. Linder addressed this, we're talking  
14 about significant sums of money that the Government has  
15 located in the United States and grabbed from the  
16 Brockmans. But those significant sums of money pale in  
17 comparison to the \$1.4 billion, \$1.45 billion  
18 liability. If that liability is ever going to get  
19 paid, it's going to get paid either because the trust  
20 posts the bond and it's sitting there, or because  
21 somebody looks to Reynolds as an asset that will have  
22 been determined at that point to belong to  
23 Mr. Brockman.

24 If Mr. Brockman is found, or  
25 Mr. Brockman's estate is found to owe the funds, to owe

1 back taxes, penalties, interest, the only chance the  
2 Government has of coming close to collection, being  
3 actually able to fully collect, has to come from one of  
4 those sources.

5           So what they're doing here is they're  
6 taking, you know, after tax dollars, assets, from a  
7 family that is really just living their lives. And I'm  
8 not -- you know, living their lives well, hard-earned  
9 money because, you know, he built and served as the  
10 head of this company for many years. But it's not  
11 addressing the issue here. And at a certain point,  
12 Your Honor, it's punitive to keep going after the  
13 Brockmans in this way.

14           THE COURT: Counsel, you have got about  
15 another minute.

16           MS. KENEALLY: Your Honor, I'm also --  
17 coincidentally, there's something Mr. Varnado  
18 apparently wants me to say.

19           ***[Pause]***

20           To right back on the bond, just to make  
21 the one point on the bond, again, the core question,  
22 the core thing we're asking this Court to do is to find  
23 that there's no basis for a jeopardy assessment. The  
24 bond, that request is, given that that is still in  
25 flux, to stay collection and that's fully briefed in

1 the papers.

2 But, you know, I was about to say, I'm on  
3 the last slide and it's something that I've already  
4 commented on, which is they have to have something. I  
5 mean, I respect it can be a reasonable belief, but it  
6 can't be speculation, it can't be dirty windows, it  
7 can't be might, could. It can't be, if we don't do  
8 something now, somebody might do something in three  
9 months. And it can't be we thought it was happening,  
10 but that's not what occurred.

11 So, Your Honor, thank you for your time  
12 this morning and we ask for an abatement of the  
13 jeopardy assessment.

14 THE COURT: Thank you, Ms. Keneally.

15 Counsel, I know that you have sort of the  
16 burden, but I think I've heard everything that I need  
17 to hear from the parties in oral argument. Was there  
18 anything, just briefly from the Government, that you  
19 wanted to tell the Court?

20 MR. LINDER: Yes, Your Honor. I want to  
21 correct just maybe a slight mistake. It's that the  
22 IRS could not investigate by statute, the IRS could not  
23 issued an administrated summons. An example counsel  
24 gave was the IRS could not issue an administrated  
25 summons at the banks to chase out the proceeds.

1                   26 U.S.C. 7602 prevents the IRS from  
2     issuing an administrative summons after there's been a  
3     referral to the Department of Justice for a criminal  
4     referral. And I acknowledge that there -- I mean,  
5     there is a criminal referral and Mr. Brockman is under  
6     Indictment, so they couldn't issue that.

7                   I think just what on this idea that things  
8     are disclosed to the IRS, I mean, these disclosures are  
9     after the fact. The Hardwicke disclosure that  
10    Ms. Keneally is referring to is in a footnote in a  
11    protest they filed. No one is contacting the IRS  
12    saying, "Hey, we sold this property." I mean, that  
13    property was sold -- that interest they are deferring  
14    to was sold in March. They filed a protest. They say,  
15    oh, the property was sold.

16                  But what's important, as the Court picked  
17    up, is where are the funds? I mean, you've taken a  
18    hard asset, you've converted this asset to cash, now  
19    the cash is gone. And in the case of the Lot 16  
20    property, I mean, it's the jeopardy assessment itself.  
21    The ability to issue a jeopardy levy prevented those  
22    proceeds from going somewhere. You can claim that they  
23    were going to stay there the whole time, but what we  
24    know is there is no evidence that the bank came in and  
25    said you have to close all your accounts. The evidence

1 is that there was a new account at Wallis Bank not  
2 reported to the IRS, the IRS happened to find it, and  
3 lo and behold, there were the proceeds from that sale.

4 And I note, Your Honor, that that property  
5 was sold for about \$1.45 million, and the evidence they  
6 presented that show the proceeds went into that account  
7 were a little over a million dollars. So there's  
8 300,000 that appears to be missing or unaccounted for.

9 Disclosure to the IRS of a sale is not  
10 enough. I mean, these sales, stock sales,  
11 distributions were disclosed to the IRS from the known  
12 financial institution. The IRS levied. No funds.  
13 Over \$3 million was not found available. Small amount.  
14 But it shows them moving the cash. It shows the  
15 importance of being able to trace it.

16 Mr. Brockman has not come in and said, "I  
17 sold this property, the proceeds went X." That's their  
18 choice. If they don't want to disclose that to the  
19 IRS, that's their choice, but you can't use a sword and  
20 a shield at the same time. If they don't want to  
21 disclose to the IRS, maybe they are not disclosing  
22 because they are worried about the IRS collecting.  
23 You can't have it both ways. You can't say, "Well, we  
24 disclosed the sale, but you guys try to find the  
25 proceeds."

1                   And I don't think the IRS should be  
2 penalized in regards to this jeopardy because it  
3 actually discovered a sale, acted, and was able to just  
4 find the proceeds. That's the point of the jeopardy  
5 assessment is to grant the movement of funds.

6                   That's all I have. Thank you, Your Honor.

7                   THE COURT: Okay. Thank you.

8                   MS. KENEALLY: Your Honor, may I have a moment?

9                   THE COURT: Sure.

10                  MS. KENEALLY: Thank you, Your Honor.

11                  I'll accept Mr. Linder's representation  
12 on the statute and apologize on the statement on the  
13 summonses. But I do want to address the sale of the  
14 plane and the Wallis Bank account and a little bit more  
15 on the Lot 16 for a moment.

16                  The sale of the plane, my first point on  
17 the sale of the plane is it's fully understandable that  
18 Mr. Brockman would sell a one percent interest back to  
19 the company that owns the 99 percent. It's not showing  
20 that you're trying to get rid of a hard asset to keep  
21 the Government from getting your one percent interest  
22 in that company. And again, we're talking about  
23 speculating as to where the funds went.

24                  In terms of the Wallis Bank account, I've  
25 already represented we'll undertake and we'll let the

1 Court know -- we'll keep the Court apprised of our  
2 efforts and we'll undertake to get the records from the  
3 Wallis Bank account. But the Wallis Bank account was  
4 opened in I believe early '21 and it's a bank account  
5 like any other bank account where, you know, eventually  
6 there's going to be a 1099 issued on the bank account.  
7 And it's opened as a routine bank account. It's not  
8 hidden.

9 THE COURT: How much -- how much is in the bank  
10 account now?

11 MS. KENEALLY: Zero.

12 THE COURT: Okay.

13 MS. KENEALLY: They have it all.

14 THE COURT: And so the Government has all of  
15 that?

16 MS. KENEALLY: The Government wiped out the  
17 Wallis Bank account.

18 THE COURT: Okay.

19 MS. KENEALLY: Yes. They grabbed everything  
20 in the Wallis Bank account. And again, we'll get to  
21 Your Honor -- now it's three accounts.

22 THE COURT: Well, don't they know how much  
23 they took from the bank account?

24 MS. KENEALLY: I don't know if they know that  
25 here today.



1 THE COURT: Okay.

2 MS. KENEALLY: I don't know if they know that  
3 here today. But my point on the Wallis Bank account  
4 is, again, if you're going to move assets outside of  
5 the reach of the Government, you don't put them in a  
6 bank account in a bank in Texas where the bank is going  
7 to issue 1099s on the account and leave the funds  
8 sitting there after a jeopardy levy issues.

9 THE COURT: All right. But their point was  
10 that the Wallis Bank -- and I thought I read this --  
11 that the Wallis Bank wasn't the source -- am I correct,  
12 counsel? The Wallis Bank wasn't targeted in the first  
13 round of seizures, for lack of a better word?

14 MS. KENEALLY: That's correct, Your Honor.

15 THE COURT: I mean --

16 MS. KENEALLY: The Wallis Bank sat in place --

17 THE COURT: So they weren't really --

18 MS. KENEALLY: The Wallis Bank --

19 THE COURT: So they weren't -- the Wallis Bank  
20 account wasn't really on the radar of the IRS at the  
21 time the original -- I'm just calling them seizures --  
22 the original collections were made?

23 MS. KENEALLY: That's correct, Your Honor, but  
24 the existence of the Wallis Bank is not only not proof  
25 that Mr. Brockman is trying to move assets outside of

1 their reach. It's proof that the Brockmans are leaving  
2 the asset sitting right here in the United States. I  
3 mean, it was there to be levied and it was levied.

4 It was -- and to the extent that it was  
5 not yet reported, it was not due yet to be reported.  
6 But it would have been reported and there was no effort  
7 to move the money out before that reported or before  
8 they found it. It just -- you know, it sat there for  
9 the take.

10 Unless you have any other questions, Your  
11 Honor. Thank you for your time this morning.

12 THE COURT: No further questions. Thank you,  
13 counsel. Excellent argument, gave me a lot to think  
14 about. I will give this priority. I will get an  
15 answer back to you quickly. Very interesting issues  
16 and very good argument, but I'm going to get a decision  
17 back to you quickly.

18 MS. KENEALLY: Your Honor, may we have --

19 THE COURT: Oh, you want time to --

20 MS. KENEALLY: I think what I'd like to ask  
21 for, particularly given that I have to contact the  
22 Brockman family and it's a difficult time right now for  
23 the Brockman family: If we could have two weeks to  
24 either get the records or inform you of our efforts to  
25 get the records, I would appreciate that.

1 THE COURT: Sure. No opinions will be issued  
2 or anything done for two weeks until I get that  
3 information.

4 MS. KENEALLY: Thank you, Your Honor.

5 THE COURT: Great. Anything further from the  
6 Government?

7 MR. LINDER: Nothing further, Your Honor.  
8 Thank you.

9 THE COURT: Great. Thank you, counsel, and  
10 we'll stand in recess.

11 MS. KENEALLY: Thank you, Your Honor.

12 ***[11:04 a.m. - Proceedings adjourned]***

13

14 C E R T I F I C A T I O N

15

16 I certify that the foregoing is a correct  
17 transcript of the electronic sound recording of the  
18 proceedings in the above-entitled matter.

19

20

21 /s/ Gwen Reed

22 9-6-22

23

24

25